

I am not aware of any other matter now in dispute in the case, except the question of costs. Any costs incurred or paid by Stockett alone, if there be such, should be paid out of the funds, as they were not incurred by his default or misconduct. The banks cannot be allowed costs, as the litigation in this matter never would have taken place but for their negligence, nor can Wayman be allowed costs, he being equally culpable. The costs of Mrs. Jones and the *cestui que trusts* may be allowed out of the fund, as it will in that case fall upon them in nearly just proportions in consequence of their respective interests in the fund.

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[On the 6th of December, 1850, a further opinion was delivered in the case, upon the submission of the corrected accounts for ratification.]

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OPINION OF JUDGE BREWER:

This cause is again submitted on the Auditor's report of August 13th, 1850, and the accounts corrected in pursuance of the order of the court, of July 18th, 1850. The accounts F., G., J. and K., corrected, seem to be in conformity with that order. Mrs. Jones is not, however, to be charged with any portion of the interest which would otherwise have been payable to her, to the exoneration of her husband's personal estate, from which she is to contribute one-third. Accounts F., G., J. and K., corrected, are, therefore, hereby ratified and confirmed, and a decree or order may be prepared in conformity therewith, with the exception above stated.

Accounts J. No. 1, and K. No. 1, corrected, are rejected. The decision as to costs will be governed by the order of July 18th. The expense of stating the accounts, to wit, Auditor's fees, although charged by him to the banks, are not more their costs than the costs of the other parties, and should be paid in equal proportions by the banks, Wayman, and Mrs. Jones, as administratrix of her deceased husband.

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A. RANDALL, for Wayman.

McLEAN and ALEXANDER, for the other Parties.